

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONYA NICOLE SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67085

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK


ORDER OF REVERSAL AND REMAND


This is an appeal from a judgment of conviction entered pursuant to a guilty plea, of obtaining and using personal identification information of another. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

Appellant Tonya Smith argues the district court erred by denying her motion to withdraw her guilty plea without first holding an evidentiary hearing. We agree. Smith argues counsel failed to explain the consequences of the plea agreement, and therefore, her plea was not voluntarily and knowingly entered. We note the plea colloquy by the district court did not discuss the consequences of her plea. The district court failed to explain the minimum and maximum sentences, the fact she might be facing large habitual criminal treatment, and the constitutional rights she was waiving. There is nothing in the record to demonstrate she understood the consequences of entering her plea. Therefore, an evidentiary hearing is necessary because her claim is not belied by the record and, if true, she would be entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

On remand, the district court should apply the new holding in *Stevenson*, where the Nevada Supreme Court decided “the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just.” *Stevenson v. State*, ___ Nev. ___, ___, 354 P.3d 1277, 1280-81 (2015). Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Eighth Judicial District Court, Department Two
Carmine J. Colucci & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹Because we reverse the judgment of conviction, we decline to consider Smith’s claim that her sentence constitutes cruel and unusual punishment.